

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 **ISMAEL ZAYAS JIMENEZ, et al.,**

4 **Plaintiffs,**

5 **v.**

CIVIL 06-1501 (GAG)(MEL)

6 **ANGEL HERNANDEZ, et al.,**

7 **Defendants.**

8 **OPINION AND ORDER**

9 Plaintiffs, Ismael Zayas Jiménez, Omar Zayas Fonseca, and Ana Teresa Zayas Fonseca
10 (hereinafter collectively “Plaintiffs”), filed this suit alleging constitutional rights violations under
11 the Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments of the United States Constitution.
12 They bring this action pursuant to 42 U.S.C. §§ 1983 and 1988 alleging a claim of excessive use of
13 force, as well as state law claims under Article 1802 of the Civil Code of Puerto Rico, P.R. Laws
14 Ann. tit. 31, § 5141, and Article II of the Constitution of the Commonwealth of Puerto Rico.
15 Defendants Angel D. Hernández, Elvin Rivera, John Doe, Mariano Quiñones, Héctor Alvelo, Ariel
16 López, and Iván Díaz (hereinafter collectively “Defendants”) timely moved for summary judgment
17 based on failure to state a claim, qualified immunity, Eleventh Amendment immunity, and
18 inapplicability of the doctrine of supervisory liability. After a thorough review of all pleadings and
19 pertinent law, the court **DENIES** defendants’ motion for summary judgment (Docket No. 134).

20 **I. Standard of Review**

21 Summary Judgment is appropriate when “the pleadings, depositions, answers to
22 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
23 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter
24 of law.” Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). “An issue is
25 genuine if ‘it may reasonably be resolved in favor of either party’ at trial, and material if it
26 ‘possess[es] the capacity to sway the outcome of the litigation under the applicable law’.” Iverson
27 v. City of Boston, 452 F.3d 94, 98 (1st Cir. 2006) (alteration in original) (citations omitted). The
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Civil No. 06-1501 (GAG)(MEL)

1 moving party bears the initial burden of demonstrating the lack of evidence to support the non-
2 moving party's case. Celotex, 477 U.S. at 325. The nonmoving party must then "set forth specific
3 facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). If the court finds that
4 some genuine factual issue remains, the resolution of which could affect the outcome of the case,
5 then the court must deny summary judgment. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
6 248 (1986).

7 When considering a motion for summary judgment, the court must view the evidence in the
8 light most favorable to the non-moving party (here, the plaintiff) and give that party the benefit of
9 any and all reasonable inferences. Id. at 255. Moreover, at the summary judgment stage, the court
10 does not make credibility determinations or weigh the evidence. Id. Summary judgment may be
11 appropriate, however, if the non-moving party's case rests merely upon "conclusory allegations,
12 improbable inferences, and unsupported speculation." Forestier Fradera v. Municipality of
13 Mayaguez, 440 F.3d 17, 21 (1st Cir. 2006) (quoting Benoit v. Technical Mfg. Corp., 331 F.3d 166,
14 173 (1st Cir. 2003)).

II. Relevant Material Facts and Procedural Background

15 Consistent with the summary judgment standard, the court states the facts in the light most
16 favorable to Plaintiffs. See Iverson, 452 F.3d at 98. Additionally, in accordance with Local Rule
17 56, the court credits only facts properly supported by accurate record citations. See Local Rule
18 56(e). The court has disregarded all argument, conclusory allegations, speculation, and improbable
19 inferences disguised as facts. See Forestier Fradera, 440 F.3d at 21; Medina-Muñoz v. R.J. Reynolds
20 Tabacco Co., 896 F.2d 5, 8 (1st Cir. 1990).

21 On May 21, 2005, plaintiff Ismael Zayas was driving toward San Juan on Road 1. See
22 Docket No. 63, ¶ 24. Plaintiffs admit that he had consumed alcohol prior to operating his vehicle.
23 Id. at ¶ 25; Docket No. 165-3 at ¶ 4. On that night, Mr. Zayas was pulled over by police officers
24 Angel Hernández Picart and Elvin Rivera for allegedly failing to wear his seatbelt. Id. at ¶ 26. Mr.
25 Zayas was given a traffic ticket to that effect. See Docket 134-3. After pulling him over, agents
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Civil No. 06-1501 (GAG)(MEL)

1 Hernández and Rivera noticed that Mr. Zayas smelled of alcohol and administered a field test.
2 Docket No. 136, ¶ 6; Docket No. 63, ¶ 28. Plaintiffs contend that, after the field test was
3 administered, Mr. Zayas was grabbed and forcefully removed from his car by the intervening agents.
4 See Docket No. 165-3, ¶ 7; Docket No. 63, ¶ 29. After Mr. Zayas exited the vehicle (or was
5 forcefully removed), his pants began to fall below his waistline. See Docket No. 63, ¶ 30. Agents
6 Hernández and Rivera subsequently placed Mr. Zayas under arrest for driving under the influence.
7 See Docket No. 63, ¶ 31. Plaintiffs allege that Mr. Zayas was not allowed to pull his pants back up
8 securely before being handcuffed and that during the arrest he was deliberately and intentionally hit
9 in the chest, arms, and legs by agents Hernández and Rivera. See Docket No. 63, ¶¶ 31, 33, 34. Mr.
10 Zayas testified in his deposition that police-issued batons were used during the assault. See Docket
11 No. 165-4 at 27-29. Defendants, in turn, contend that Mr. Zayas displayed hostile behavior and
12 resisted arrest, which is why the intervening officers had to struggle with him in order to secure the
13 handcuffs. See Docket No. 136, ¶ 10. Agent Hernández testified that the force used against Mr.
14 Zayas was only that necessary in order to arrest him and that no baton was used during the
15 intervention. See Docket No. 165-8 at 3.

16 After being placed under arrest, Mr. Zayas was taken by agent Hernández to the Caguas
17 Transit Station. See Docket No. 136, ¶ 11. Mr. Zayas testified that he was assaulted once again by
18 agent Hernández in the parking lot, before entering the Transit Station. See Docket No. 165-4 at 44-
19 49; Docket No. 63, ¶ 37. Once inside the Station, a breathalyzer test was administered and indicated
20 that Mr. Zayas had a blood alcohol level of 0.183%. See Docket No. 63, ¶ 13. After administering
21 the breathalyzer test, Mr. Zayas was given citations for hitting a police officer, resisting arrest, and
22 driving while intoxicated. See Docket Nos. 134-5, 134-6, 134-7. Finally, the direct supervisor of
23 agents Hernández and Rivera on the night of May 21, 2005, Sergeant Mariano Quiñones, drove Mr.
24 Zayas to his home. See Docket No. 136, ¶ 14, 27. Plaintiffs allege that, having been severely
25 beaten, Mr. Zayas was in need of immediate medical attention, but none was provided. See Docket
26 No. 165-3, ¶ 14. After arriving at his home, Mr. Zayas was rushed to the hospital by his son. See

Civil No. 06-1501 (GAG)(MEL)

1 Docket No. 63, ¶ 47.

2 On July 14, 2006, Mr. Zayas was convicted for driving under the influence of alcohol. See
3 Docket No. 134-8. Mr. Zayas filed an administrative complaint against the police officers involved
4 in his arrest, but the same was dismissed on August 15, 2006 for lack of sufficient proof.
5 See Docket No. 134-11. Mr. Zayas appealed the dismissal, but after failing to appear at the court
6 ordered hearing and not showing cause why the complaint should be denied for lack of prosecution,
7 the administrative appeals panel dismissed the complaint on December 4, 2007. See Docket No.
8 134-12.

9 The original complaint in this case was filed was filed on May 15, 2006 (Docket No. 1)
10 against agents Hernández and Rivera, as well as Sargent Quiñones. Defendants “John” and “Richard
11 Doe” were also named in the complaint, respectively, to represent all police officers who at times
12 relevant to this complaint were present and/or participated in the use of excessive force, but did
13 nothing to stop it, as well as supervisors who failed to adequately train and monitor the alleged
14 assailants. Plaintiffs amended their complaint on March 14, 2007 and on October 3, 2007 (Docket
15 Nos. 43 & 63) to include other supervising officers, namely Héctor Alvelo, Iván Díaz, and Ariel
16 López. Defendants filed a motion for summary judgment on November 28, 2008 (Docket Nos. 134-
17 136), which was opposed by Plaintiffs on December 23, 2008 (Docket No. 165).

18 III. Discussion

19 Defendants move for summary judgment on various grounds: failure to state a claim,
20 qualified immunity, Eleventh Amendment immunity, and inapplicability of the doctrine of
21 supervisor liability. The court addresses each averment separately.

22 A. Failure to state a claim

23 Plaintiffs bring this civil rights action pursuant to 42 U.S.C. § 1983, which provides a cause
24 of action for any person whose constitutional rights are violated under color of state law. Section
25 1983 is not a source of substantive rights. Instead, it provides a procedural mechanism for enforcing
26 federal constitutional or statutory rights. Albright v. Oliver, 510 U.S. 266, 271 (1994). Therefore,
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Civil No. 06-1501 (GAG)(MEL)

a Section 1983 plaintiff must identify the particular federal right that he seeks to enforce via judicial proceedings. In order to prevail in a Section 1983 claim, a plaintiff must demonstrate that the defendant (1) acted under color of state law and (2) deprived him of the identified federal right. Cepero-Rivera v. Fagundo, 414 F.3d 124, 129 (1st Cir. 2005) (quoting Romero-Barcelo v. Hernández-Agosto, 75 F.3d 23, 32 (1st Cir. 1996)). To satisfy the second element, plaintiffs must show that the defendants conduct was the cause in fact of the alleged deprivation. Rodríguez Cirio v. García, 115 F.3d.50, 52 (1st Cir. 1997).

In this case, Plaintiffs contend that Ismael Zayas was assaulted during a traffic stop by defendants Angel Hernández and Elvin Rivera, officers in the Puerto Rico Police Department, who used excessive force without provocation or reason. It is further alleged that other officers, collectively named “John” and “Richard Doe” in the complaint, were at the scene and did nothing to stop the use of excessive force. Plaintiffs also contend that supervising officers, Mariano Quiñones, Héctor Alvelo, Ariel López, and Ivan Díaz failed to protect plaintiff Ismael Zayas by providing inadequate training and supervision to the officers under their charge. As police officers, Defendants were acting under color of law. Furthermore, these allegations, if taken as true, certainly constitute a constitutional violation under the Fourth Amendment, which bars the use of unreasonable force during an arrest. Hence, Plaintiffs have established their Section 1983 claim.

B. Qualified Immunity

Public officials are entitled to qualified immunity from damages in a Section 1983 claim “if they acted with the objective good faith belief that they were not violating the plaintiff’s statutory or constitutional rights, as measured by the state of the law when the deprivation occurred.” See Maldonado Santiago v. Velázquez García, 821 F.2d 822, 830 (1st Cir. 1987). The three-part inquiry requires the court to consider: (1) whether the plaintiff’s allegations, if true, establish a constitutional violation; (2) if so, whether the right was clearly established at the time of the alleged violation; and (3) whether a similarly situated reasonable official would have understood that the challenged action violated that right. Whalen v. Mass. Trial Court, 397 F.3d 19, 23 (1st Cir. 2005). Since qualified

Civil No. 06-1501 (GAG)(MEL)

immunity is an affirmative defense, the defendant has the burden to present evidence that he acted objectively reasonable under the circumstances. See id. at 345.

In the present case there are material facts in dispute regarding the objective reasonableness of Defendant's actions. Therefore, the court cannot at this stage determine whether Defendants are eligible to receive qualified immunity.

C. Eleventh Amendment

The Eleventh Amendment bars suits against states for money damages unless the state has consented. See Metcalf & Eddy v. P.R. Aqueduct & Sewer Authority, 991 F.2d 935, 938 (1st Cir.1993); In re San Juan Dupont Plaza Hotel Fire Lit., 888 F.2d 940, 942 (1st Cir.1989); Ramírez v. P.R. Fire Serv., 715 F.2d 694, 697 (1st Cir.1983).¹ Eleventh Amendment Immunity extends to arms or "alter egos" of the State. Fresenius Medical Care Cardiovascular Resources, Inc. v. Puerto Rico and Caribbean Cardiovascular Center Corp., 322 F.3d 56 (1st Cir.2003); Bernier-Aponte v. Izquierdo-Encarnación, 196 F.Supp.2d 93, 98-99 (D.P.R.2002). Suits filed against state officials in their official capacity are deemed actions against the state, regardless if the state is a named party to the suit, if the real party in interest is the State and not the official. Hafer v. Melo, 502 U.S. 21, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991); Will v. Mich. Dep't of State Police, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Consequently, when as here, Plaintiff brings a suit against a Puerto Rico state official in his personal capacity rather than against the Commonwealth of Puerto Rico itself, the Court must ascertain whether the suit in reality is a suit against the Commonwealth of Puerto Rico. Muirhead v. Mecham, 427 F.3d 14, 18 (1st Cir.2005). This analysis examines the conduct challenged and the relief sought. Id. When the actions of an officer do not conflict with the terms of his valid statutory authority, they are considered actions of the sovereign, which are protected by the Eleventh Amendment. Larson v. Domestic & Foreign Commerce Corp., 337 U.S.

¹ It is well-established that the Commonwealth of Puerto Rico is considered a state for Eleventh Amendment purposes. See Bernier-Aponte v. Izquierdo-Encarnacion, 196 F.Supp.2d 93, 98 (D.P.R.2002)(citing Negrón Gaztambide v. Hernández Torres, 145 F.3d 410 (1st Cir.1998)).

Civil No. 06-1501 (GAG)(MEL)

682, 695 (1949). However, the doctrine of sovereign immunity does not apply when an officer's power is limited by Constitution or statute and his actions go beyond those limitations. Id. at 689; see also Muirhead, 427 F.3d at 19. Furthermore, when the relief sought “would expend itself on the public treasury or domain, or interfere with the public administration, or if the effect of the judgment would be to restrain the Government from acting, or to compel it to act” the suit will be considered one against the sovereign. Dugan v. Rank, 372 U.S. 609, 620, 83 S.Ct. 999, 10 L.Ed.2d 15 (1963) (citations omitted).

Plaintiffs in the instant case did not sue either the Commonwealth of Puerto Rico or any of its instrumentalities. Furthermore, because Defendants are sued in their individual capacities, any damage award would not be paid from the Commonwealth’s coffer, but rather from Defendants’ own assets. Thus, this is not a suit directed at the Commonwealth of Puerto Rico itself, but rather at the Defendants in their personal capacities. Therefore, Eleventh Amendment Immunity is inapplicable in the present case.

D. Supervisory Liability

Under section 1983, supervisory liability can only be grounded on the supervisor's own acts or omissions either through the supervisor's direct participation in the unconstitutional conduct, or through conduct that amounts to condonation or tacit authorization. Whitfield v. Melendez-Rivera, 431 F.3d 1, 14 (1st Cir.2005)(internal citation omitted). “[A]bsent participation in the challenged conduct, a supervisor can be held liable only if (1) the behavior of his subordinates results in a constitutional violation and (2) the supervisor's action or inaction was affirmatively linked to the behavior in the sense that it could be characterized as supervisory encouragement, condonation or acquiescence or gross negligence . . . amounting to deliberate indifference.” Bisbal-Ramos v. City of Mayaguez, 467 F.3d 16, 24 (1st Cir. 2006) (citing Hegarty v. Somerset County, 53 F.3d 1367, 1379-80 (1st Cir.1995) (internal citations, quotation marks and punctuation denoting alterations omitted)). A supervisor's action or inaction amounting to deliberate indifference will be found only if “it would be manifest to any reasonable official that his conduct was very likely to violate an

Civil No. 06-1501 (GAG)(MEL)

individual's constitutional rights.” Germany v. Vance, 868 F.2d 9, 18 (1st Cir.1989). “The ‘affirmative link’ requirement contemplates proof that the supervisor's conduct led inexorably to the constitutional violation.” Hegarty v. Somerset County, 53 F.3d 1367, 1380 (1st Cir.1995)(internal citations and quotations omitted).

As regards Mariano Quiñones, Héctor Alvelo, Ariel López, and Ivan Díaz, Defendants raise the applicability of qualified immunity to the supervisory action alleged by Plaintiffs. However, such a determination is, to a substantial extent, a fact-dependent, gray area. See Camilo-Robles v. Zapata, 175 F.3d. 41, 44 (1st Cir.1999). For this reason, and given the existence of multiple issues of fact regarding who was in charge of the alleged assailants on the day of the arrest, see Docket No. 136, ¶¶ 29-36, 39; Docket No. 165-3, ¶¶ 30-32, 34-36, 39, the court cannot at this stage determine whether the supervisory defendants are liable under this doctrine.

IV. Conclusion

For the aforementioned reasons, the court **DENIES** defendants’ motion for summary judgment (Docket No. 134).

SO ORDERED.

In San Juan, Puerto Rico this 21st day of January, 2009.

s/ Gustavo A. Gelpí

GUSTAVO A. GELPI
United States District Judge